

INTERMAC, INC.

IBLA 95-606

Decided October 23, 1997

Appeal from a Decision of the Palm Springs-South Coast Resource Area Manager, Bureau of Land Management, rejecting right-of-way application CACA 35692.

Affirmed.

1. Rights-of-Way: Generally--Rights-of-Way: Applications--Withdrawals and Reservations: Generally

A Decision rejecting an application for a road right-of-way on lands withdrawn from entry under the public land laws and reserved to the Forest Service as a forest fire field-testing area will be affirmed when the Forest Service objects to motor vehicle use on the withdrawn land.

APPEARANCES: Roger D. Morgan, President, Intermac, Inc., Roseville, California, for Intermac, Inc.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Roger D. Morgan, President and Chief Executive Officer of Intermac, Inc. (Intermac), has filed an appeal of a June 7, 1995, Decision by the Area Manager, Palm Springs, California, Resource Area (formerly South Coast Resource Area), Bureau of Land Management (BLM), denying application CACA 35692 for a road right-of-way across public land in secs. 18 and 19, T. 4 S., R. 1 E., San Bernardino Meridian, Riverside County, California. The application was filed January 16, 1992, under provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1994).

Intermac's right-of-way application sought a 32-foot wide roadway with a 7-foot shoulder on one side crossing secs. 18 and 19 to provide access to "Soboba Summit," a "resort and golf course project," under development by Intermac in Riverside County, northeast of the San Jacinto River and San Jacinto, California. The application was rejected because the "public land is withdrawn to the U.S. Forest Service for experimental fire research." The BLM Decision stated that "[i]n order to maintain

integrity of ongoing studies and maintain the area for future studies, the U.S. Forest Service requires as little disturbance as possible. Therefore, your application is rejected as it is incompatible with withdrawal objectives."

In a Statement of Reasons on appeal (SOR), Intermac claims that "from a practical standpoint," Intermac lands are "landlocked without availability of roads through BLM land." The SOR contends that "[d]enial of our request will * * * severely affect our ability to pursue * * * [our plan] and in turn deprive the community, our company and the local, state and federal governments of badly needed tax revenues." Intermac maintains the development plan is compatible with BLM's South Coast Resource Management Plan, said to have been based on public hearings that concluded taxpayers wanted "MORE PUBLIC ACCESS and MORE RECREATION." (SOR at 2.) Finally, Intermac argues that the Forest Service has "TIED UP 12,000 ACRES AND USED LESS THAN FIVE ACRES FOR ROUGHLY TEN SMALL STUDIES," and that "RECREATION, JOB STIMULATION, AND ECONOMIC STIMULATION are higher and better uses for the land." (SOR, 2-3.) Intermac maintains that a road right-of-way grant will not impinge upon the Forest Service's 5-acre study area, and that the right-of-way should be permitted to coexist with Forest Service uses.

Section 501(a) of FLPMA, 43 U.S.C. § 1761(a)(6) (1994), grants the Secretary of the Interior authority to issue transportation rights-of-way through public lands. See also 43 U.S.C. § 1761(a)(7) (1994). Approval of rights-of-way is, therefore, a matter of Departmental discretion. John M. Stout, 133 IBLA 321, 327-28 (1995), and cases cited therein. When public lands are reserved to and administered by another Federal agency or department, withdrawal orders may be modified or revoked only with the "consent of the head of the department or agency concerned," unless an emergency situation exists. See 43 U.S.C. § 1714(i) and (e) (1994).

The proposed right-of-way runs across lands withdrawn from entry and reserved by the Department of the Interior for Forest Service use as a field-testing area in connection with the Western Forest Fire Research Laboratory. Public Land Order No. (PLO) 3221, that withdrew approximately 12,670 acres of public lands for Forest Service management of the North Mountain Experimental Area, became effective on September 10, 1963, and remains in effect. See PLO 3221, 28 Fed. Reg. 9878 (Sept. 4, 1963); Memorandum, Rob Nauert to Nancy Alex, dated Mar. 26, 1992. The PLO removes all of sec. 18 and all but the S½S½ sec. 19 from appropriation under the public land laws, and provides: "Rights of use granted pursuant to this order shall be limited to those activities which are related directly to research in problems concerning the control, prevention and suppression of forest and range fires."

[1] In May 1994, the South Coast Resource Management Plan and Record of Decision became effective. That plan acknowledged that BLM lands near the Soboba withdrawal were to be allocated to recreational use, and stated that BLM would pursue modification of PLO 3221. On February 16, 1995, the South Coast Area Manager, BLM, notified the Forest Service that BLM was

interested in managing lands within the field-testing area as a special recreation management area and requested a reply concerning the Forest Service's position regarding continued management of the lands. The Forest Service replied on March 6, 1995, concerning the land withdrawn by PLO 3221, that "[t]he need for withdrawal still exists as we currently have 2 active studies examining chaparral ecology and chamise chaparral fuel dynamics." The Forest Service rejected BLM's planned recreational use of the area and concluded that "hiking, mountain biking, horse riding, motor vehicle use, and other types of intrusive human access should be discouraged." Under the circumstances, BLM no longer has discretion to authorize such motor vehicle use on the land, contrary to the planned use by the managing agency. 43 U.S.C. § 1714(i) (1994); see also Exec. Order No. 10355, 17 Fed. Reg. 4831 (1952), reprinted in 43 U.S.C. § 141 note (1994). Departmental regulations provide that a right-of-way application may be denied if the authorized officer determines a proposed right-of-way is inconsistent with management purposes or not in the public interest. 43 C.F.R. § 2802.4(a). Under the circumstances, BLM's conclusion that a road right-of-way for a private development is not compatible with reservation of the land for experimental fire research is reasonable.

Intermac claims their land lacks access except through BLM lands, but acknowledges that other routes are available, although not preferable. A showing that the existence of reasonable alternate access is problematic, however, provides insufficient reason for overturning a BLM decision to reject a road right-of-way application when alternate access is in fact available, if the proposed access would conflict with other land management objectives. Albert Eugene Rumfeldt, 134 IBLA 19, 22 (1995). The burden is on Intermac, as the party challenging BLM's decision, to support its allegations with evidence showing error. Conclusory allegations of error or differences of opinion, standing alone, do not suffice to show error in a BLM decision. See Stewart Hayduk, 133 IBLA 346, 354 (1995) and cases cited.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge